

R315. Environmental Quality, Waste Management and Radiation Control, Waste Management.

Rule R315-124. Procedures for Decisionmaking.

R315-124-1. Procedures For Decisionmaking - Applicability.

Unless otherwise stated in Rules R315-17, 101, 102, 260 through 266, 268, 270, or 273, Rule R315-124 applies to all actions by the Director taken under the rules listed above.

R315-124-3. Procedures For Decisionmaking - Application For A Permit.

(a)(1) Any person who requires a permit, for a hazardous waste treatment, storage or disposal facility under Section 19-6-108 shall complete, sign, and submit to the Director an application for each permit required under Section R315-270-1. Applications are not required for permits by rule, Section R315-270-60.

(2) The Director is not required to begin the processing of a permit until the applicant has fully complied with the application requirements for that permit. See Sections R315-270-10, and 13.

(3) Permit applications shall comply with the signature and certification requirements of Section R315-270-11.

(b) Reserved

(c) The Director shall review for completeness every application for a permit. Upon completing the review, the Director shall notify the applicant in writing whether the application is complete. If the application is incomplete, the Director shall list the information necessary to make the application complete. When the application is for an existing facility, the Director shall specify in the notice of deficiency a date for submitting the necessary information. The Director shall notify the applicant that the application is complete upon receiving this information. After the application is completed, the Director may request additional information from an applicant to clarify, modify, or supplement previously submitted material. Requests for such additional information will not render an application incomplete.

(d) If an applicant fails or refuses to correct deficiencies in the application, the permit may be denied and appropriate enforcement actions may be taken under applicable provisions of the Utah Solid and Hazardous Waste Act.

(e) If the Director decides that a site visit is necessary for any reason in conjunction with the processing of an application, the Director shall notify the applicant and a date shall be scheduled.

(f) The effective date of an application is the date on which the Director notifies the applicant that the application is complete as provided in Subsection R315-124-3(c).

(g) For each permit application, the Director shall, no later than the effective date of the application, prepare

and mail to the applicant a schedule that specifies target dates by which the Director intends to:

- (1) Prepare a draft permit;
- (2) Give public notice;
- (3) Complete the public comment period, including any public hearing; and
- (4) Issue a final permit.

R315-124-5. Procedures For Decisionmaking - Modification, Revocation And Reissuance, Or Termination Of Permits.

(a) Permits may be modified, revoked and reissued, or terminated either at the request of any interested person, including the permittee, or upon the Director's initiative. However, permits may only be modified, revoked and reissued, or terminated for the reasons specified in Sections R315-270-41 or 43. All requests shall be in writing and shall contain facts or reasons supporting the request.

(b) If the Director decides the request is not justified, the Director shall send the requester a brief written response giving a reason for the decision. Denials of requests for modification, revocation and reissuance, or termination are not subject to public notice, comment, or hearings. Denials by the Director may be appealed by following the requirements of Sections R305-7-201 through 217.

(c)(1) If the Director tentatively decides to modify or revoke and reissue a permit under Section R315-270-41, other than Subsection R315-270-42(c), the Director shall prepare a draft permit under Section R315-124-6 incorporating the proposed changes. The Director may request additional information and, in the case of a modified permit, may require the submission of an updated application. In the case of revoked and reissued permits the Director shall require the submission of a new application.

(2) In a permit modification under Section R315-124-5, only those conditions to be modified shall be reopened when a draft permit is prepared. All other aspects of the existing permit shall remain in effect. When a permit is revoked and reissued under Section R315-124-5, the entire permit is reopened just as if the permit had expired and were being reissued. During any revocation and reissuance proceeding the permittee shall comply with all conditions of the existing permit until a new final permit is reissued.

(3) Classes 1 and 2 modifications as defined in Subsections R315-270-42(a) and (b) are not subject to the requirements of Section R315-124-5.

(d) If the Director tentatively decides to terminate a permit under Section R315-270-43 the Director shall issue a notice of intent to terminate. A notice of intent to terminate is a type of draft permit which follows the same procedures as any draft permit prepared under Section R315-124-6.

(e) All draft permits, including notices of intent to terminate, prepared under Section R315-124-5 shall be based on the administrative record as defined in Section R315-124-9.

R315-124-6. Procedures For Decisionmaking - Draft Permits.

(a) Once an application is complete, the Director shall tentatively decide whether to prepare a draft permit or to deny the application.

(b) If the Director tentatively decides to deny the permit application, the Director shall issue a notice of intent to deny. A notice of intent to deny the permit application is a type of draft permit which follows the same procedures as any draft permit prepared under Section R315-124-6. If the Director's final decision is that the tentative decision to deny the permit application was incorrect, the Director shall withdraw the notice of intent to deny and prepare a draft permit under Subsection R315-124-6(d).

(c) Reserved

(d) If the Director decides to prepare a draft permit, the Director shall prepare a draft permit that contains the following information:

(1) All conditions under Sections R315-270-30 and 32;

(2) All compliance schedules under Section R315-270-33;

(3) All monitoring requirements under Section R315-270-31;

(4) All information required for permits issued under Rules R315-15, 17, and R315-301 through 320; and

(5) Standards for treatment, storage, and/or disposal and other permit conditions under Section R315-270-30;

(e) All draft permits prepared by the Director under Section R315-124-6 shall be accompanied by a statement of basis or fact sheet, and shall be based on the administrative record, publicly noticed and made available for public comment. The Director shall give notice of opportunity for a public hearing, issue a final decision, and respond to comments.

R315-124-7. Procedures For Decisionmaking - Statement Of Basis.

The Director shall prepare a statement of basis for every draft permit for which a fact sheet under Section R315-124-8 is not prepared. The statement of basis shall briefly describe the conditions of the draft permit and the reasons for them or, in the case of notices of intent to deny or terminate, reasons supporting the tentative decision. The statement of basis shall be sent to the applicant and, on request, to any other person.

R315-124-8. Procedures For Decisionmaking - Fact Sheet.

(a) A fact sheet shall be prepared for every draft permit where a statement of basis is not prepared. The fact sheet shall briefly set forth the principal facts and the significant factual, legal, methodological and policy questions considered in preparing the draft permit. The Director shall send this fact sheet to the applicant and, on request, to any other person.

(b) The fact sheet shall include, when applicable:

(1) A brief description of the type of facility or activity which is the subject of the draft permit;

(2) The type and quantity of wastes, fluids, or pollutants which are proposed to be or are being treated, stored, disposed of, injected, emitted, or discharged.

(3) Reserved

(4) A brief summary of the basis for the draft permit conditions, including references to applicable statutory or regulatory provisions and appropriate supporting references to the administrative record required by Section R315-124-9;

(5) Reasons why any requested variances or alternatives to required standards were granted or denied;

(6) A description of the procedures for reaching a final decision on the draft permit including:

(i) The beginning and ending dates of the comment period under Section R315-124-10 and the address where comments will be received;

(ii) Procedures for requesting a hearing and the nature of that hearing; and

(iii) Any other procedures by which the public may participate in the final decision.

(7) Name and telephone number of a person to contact for additional information.

R315-124-9. Procedures For Decisionmaking - Administrative Record For Draft Permits.

(a) The provisions of a draft permit prepared by the Director under Section R315-124-6 shall be based on the administrative record defined in Section R305-7-209 and Section R315-124-18.

(b) Section R315-124-9 applies to all draft permits when public notice was given after the effective date of Rule R315-124.

R315-124-10. Procedures For Decisionmaking - Public Notice Of Permit Actions And Public Comment Period.

(a) Scope.

(1) The Director shall give public notice that the following actions have occurred:

(i) A permit application has been tentatively denied under Subsection R315-124-6(b); or

(ii) A draft permit has been prepared under Subsection R315-124-6(d); or

(iii) A hearing has been scheduled under Section R315-124-12;

(2) No public notice is required when a request for permit modification, revocation and reissuance, or termination is denied under Subsection R315-124-5(b). Written notice of that denial shall be given to the requester and to the permittee.

(3) Public notices may describe more than one permit or permit actions.

(b) Timing.

(1) Public notice of the preparation of a draft permit, including a notice of intent to deny a permit application, required under Subsection R315-124-10(a) shall allow at least 45 days for public comment.

(2) Public notice of a public hearing shall be given at least 30 days before the hearing. Public notice of the hearing may be given at the same time as public notice of the draft permit and the two notices may be combined.

(c) Methods. Public notice of activities described in Subsection R315-124-10(a)(1) shall be given by the following methods:

(1) By mailing or electronic mailing a copy of a notice to the following persons:

(i) The applicant;

(ii) Any other agency which the Director knows has issued or is required to issue a permit for the same facility or activity including EPA;

(iii) Federal and State agencies with jurisdiction over fish, shellfish, and wildlife resources, State Historic Preservation Officers, including any affected States, and Indian Tribes.

(iv) through (viii) Reserved

(ix) Persons on a mailing list developed by:

(A) Including those who request in writing to be on the list;

(B) Soliciting persons for "area lists" from participants in past permit proceedings in that area; and

(C) Notifying the public of the opportunity to be put on the mailing list through periodic publication in the public press and in such publications as Regional and State funded newsletters, environmental bulletins, State law journals, or through the Department web page. The Director may update the mailing list from time to time by requesting written indication of continued interest from those listed. The Director may delete from the list the name of any person who fails to respond to such a request.

(x)(A) To any unit of local government having jurisdiction over the area where the facility is proposed to be located; and

(B) to each State agency having any authority under State law with respect to the construction or operation of such facility.

(2)(i) Reserved

(ii) Publication of a notice in a daily or weekly major local newspaper of general circulation and broadcast over local radio stations.

(3) In a manner constituting legal notice to the public under State law; and

(4) Any other method reasonably calculated to give actual notice of the action in question to the persons potentially affected by it, including press releases or any other forum or medium to elicit public participation.

(5) Any person otherwise entitled to receive notice under Subsection R315-124-10(c) may waive his or her rights to receive notice for any classes and categories of permits.

(d) Contents.

(1) All public notices issued under Rule R315-124 shall contain the following minimum information:

(i) Division of Waste Management and Radiation Control, P.O. Box 144880, Salt Lake City, Utah 84114-4880;

(ii) Name and address of the permittee or permit applicant and, if different, of the facility or activity regulated by the permit;

(iii) A brief description of the business conducted at the facility or activity described in the permit application or the draft permit;

(iv) Name, address and telephone number of a person from whom interested persons may obtain further information, including copies of the draft permit, statement of basis or fact sheet, and the application; and

(v) A brief description of the comment procedures required by Sections R315-124-11 and 12 and the time and place of any hearing that will be held, including a statement of procedures to request a hearing, unless a hearing has already been scheduled, and other procedures by which the public may participate in the final permit decision.

(vi) through (ix) Reserved

(x) Any additional information considered necessary or proper.

(2) Public notices for hearings. In addition to the general public notice described in Subsection R315-124-10(d)(1), the public notice of a hearing under Section R315-124-12 shall contain the following information:

(i) Reference to the date of previous public notices relating to the permit;

(ii) Date, time, and place of the hearing; and

(iii) A brief description of the nature and purpose of the hearing, including the applicable rules and procedures.

(e) In addition to the general public notice described in Subsection R315-124-10(d)(1), all persons identified in Subsections R315-124-10(c)(1) (i), (ii), and (iii) shall be mailed or provided electronically a copy of the fact sheet or statement of basis.

R315-124-11. Procedures For Decisionmaking - Public Comments And Requests For Public Hearings.

During the public comment period provided under Section R315-124-10, any interested person may submit written comments on the draft permit and may request a public

hearing, if no hearing has already been scheduled. A request for a public hearing shall be in writing and shall state the nature of the issues proposed to be raised in the hearing. All comments shall be considered in making the final decision and shall be answered as provided in Section R315-124-17.

R315-124-12. Procedures For Decisionmaking - Public Hearings.

(a)(1) The Director shall hold a public hearing whenever the Director finds, on the basis of requests, a significant degree of public interest in a draft permit(s);

(2) The Director may also hold a public hearing at the Director's discretion, whenever, for instance, such a hearing might clarify one or more issues involved in the permit decision;

(3)(i) the Director shall hold a public hearing whenever the Director receives written notice of opposition to a draft permit and a request for a hearing within 45 days of public notice under Subsection R315-124-10(b)(1);

(ii) whenever possible the Director shall schedule a hearing under Section R315-124-12 at a location convenient to the nearest population center to the proposed facility;

(4) Public notice of the hearing shall be given as specified in Section R315-124-10.

(b) Whenever a public hearing will be held, the Director shall designate a Presiding Officer for the hearing who shall be responsible for its scheduling and orderly conduct.

(c) Any person may submit oral or written statements and data concerning the draft permit. Reasonable limits may be set upon the time allowed for oral statements, and the submission of statements in writing may be required. The public comment period under Section R315-124-10 shall automatically be extended to the close of any public hearing under Section R315-124-12. The hearing officer may also extend the comment period by so stating at the hearing.

(d) An electronic recording or written transcript of the hearing shall be made available to the public.

R315-124-13. Procedures For Decisionmaking - Obligation To Raise Issues And Provide Information During The Public Comment Period.

All persons, including applicants, who believe any condition of a draft permit is inappropriate or that the Director's tentative decision to deny an application, terminate a permit, or prepare a draft permit is inappropriate, shall raise all reasonably ascertainable issues and submit all reasonably available arguments supporting their position by the close of the public comment period, including any public hearing, under Section R315-124-10. Any supporting materials which are submitted shall be included in full and may not be incorporated by reference, unless they are already part of

the administrative record in the same proceeding, or consist of State or Federal statutes and regulations, EPA or Division documents of general applicability, or other generally available reference materials. Commenters shall make supporting materials not already included in the administrative record available to the Director as directed by the Director and consistent with Section R305-7-209. A comment period longer than 45 days may be necessary to give commenters a reasonable opportunity to comply with the requirements of Section R315-124-13. Additional time shall be granted under Section R315-124-10 to the extent that a commenter who requests additional time demonstrates the need for such time.

R315-124-15. Procedures For Decisionmaking - Issuance And Effective Date Of Permit.

(a) After the close of the public comment period under Section R315-124-10 on a draft permit, the Director shall issue a final permit decision, or a decision to deny a permit for the active life of a hazardous waste management facility or unit under Section R315-270-29. The Director shall notify the applicant and each person who has submitted written comments or requested notice of the final permit decision. This notice shall include reference to the procedures for appealing a decision on a hazardous waste permit or a decision to terminate a hazardous waste permit. For the purposes of Section R315-124-15, a final permit decision means a final decision to issue, deny, modify, revoke and reissue, or terminate a permit.

(b) A final permit decision, or a decision to deny a permit for the active life of a hazardous waste management facility or unit under Section R315-270-29, shall become effective upon issuance, unless:

(1) A later effective date is specified in the decision; or

(2) Review is requested on the permit under Rule R305-7 and a stay is granted under Subsection 19-1-301.5(16).

R315-124-16. Procedures For Decisionmaking - Stays Of Contested Permit Conditions.

The provisions covering appeals and stays are found in Rule R305-7 and Subsection 19-1-301.5(16).

R315-124-17. Procedures For Decisionmaking - Response To Comments.

(a) At the time that any final permit decision is issued under Section R315-124-15, the Director shall issue a response to comments. This response shall:

(1) Specify which provisions, if any, of the draft permit have been changed in the final permit decision, and the reasons for the change; and

(2) Briefly describe and respond to all significant comments on the draft permit or the permit application

raised during the public comment period, or during any hearing.

(b) Any documents cited in the response to comments shall be included in the administrative record for the final permit decision as defined in Section R315-124-18. If new points are raised or new material supplied during the public comment period, the Director may document the response to those matters by adding new materials to the administrative record.

R315-124-18. Procedures For Decisionmaking - Administrative Record For Final Permit.

(a) The Director shall base final permit decisions under Section R315-124-15 on the administrative record defined in Section R315-124-18.

(b) The administrative record for any final permit shall consist of the administrative record for the draft permit and:

(1) All comments received during the public comment period provided under Section R315-124-10;

(2) The recording or transcript of any hearing(s) held under Section R315-124-12;

(3) Any written materials submitted at such a hearing;

(4) The response to comments required by Section R315-124-17 and any new material placed in the record under that section;

(5) Reserved;

(6) Other documents contained in the supporting file for the permit; and

(7) The final permit.

(c) The additional documents required under Subsection R315-124-18(b) should be added to the record as soon as possible after their receipt or publication by the Division. The record shall be complete on the date the final permit is issued.

(d) Section R315-124-18 applies to all final permits when the draft permit was subject to the administrative record requirements of Section R315-124-9.

(e) Material readily available at the Division Office, or published materials which are generally available and which are included in the administrative record under the standards of Section R315-124-18 or 17, need not be physically included in the same file as the rest of the record as long as it is specifically referred to in the statement of basis or fact sheet or in the response to comments.

R315-124-19. Procedures For Decisionmaking - Appeal of Permits.

(a) Petitioning for review of a permit decision.

(1) Initiating an appeal. Appeal from a final permit decision issued under Section R315-124-15, or a decision to deny a permit for the active life of a hazardous waste

management facility or unit under Section R315-270-29 is commenced by filing a Request for Agency Action as described in Rule R305-7.

R315-124-20. Procedures For Decisionmaking - Computation Of Time.

(a) Any time period scheduled to begin on the occurrence of an act or event shall begin on the day after the act or event.

(b) Any time period scheduled to begin before the occurrence of an act or event shall be computed so that the period ends on the day before the act or event.

(c) If the final day of any time period falls on a weekend or legal holiday, the time period shall be extended to the next working day.

(d) Whenever a party or interested person has the right or is required to act within a prescribed period after the service of notice or other paper upon him or her by mail, 3 days shall be added to the prescribed time.

R315-124-31. Procedures For Decisionmaking - Pre-Application Public Meeting And Notice.

(a) Applicability. The requirements of Section R315-124-31 shall apply to all part B applications seeking initial permits for hazardous waste management units. The requirements of Section R315-124-31 shall also apply to part B applications seeking renewal of permits for such units, where the renewal application is proposing a significant change in facility operations. For the purposes of Section R315-124-31, a "significant change" is any change that would qualify as a class 3 permit modification under Section R315-270-42. The requirements of Section R315-124-31 do not apply to permit modifications under Section R315-270-42 or to applications that are submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility.

(b) Prior to the submission of a part B permit application for a facility, the applicant shall hold at least one meeting with the public in order to solicit questions from the community and inform the community of proposed hazardous waste management activities. The applicant shall post a sign-in sheet or otherwise provide a voluntary opportunity for attendees to provide their names and addresses.

(c) The applicant shall submit a summary of the meeting, along with the list of attendees and their addresses developed under Subsection R315-124-31(b), and copies of any written comments or materials submitted at the meeting, to the Director as a part of the part B application, in accordance with Subsection R315-270-14(b).

(d) The applicant shall provide public notice of the pre-application meeting at least 30 days prior to the

meeting. The applicant shall maintain, and provide to the Director upon request, documentation of the notice.

(1) The applicant shall provide public notice in all of the following forms:

(i) A newspaper notice. The applicant shall publish a notice, fulfilling the requirements in Subsection R315-124-31(d)(2), in a newspaper of general circulation in the county or equivalent jurisdiction that hosts the proposed location of the facility. In addition, the Director shall instruct the applicant to publish the notice in newspapers of general circulation in adjacent counties or equivalent jurisdictions, where the Director determines that such publication is necessary to inform the affected public.

(ii) A visible and accessible sign. The applicant shall post a notice on a clearly marked sign at or near the facility, fulfilling the requirements in Subsection R315-124-31(d)(2). If the applicant places the sign on the facility property, then the sign shall be large enough to be readable from the nearest point where the public would pass by the site.

(iii) A broadcast media announcement. The applicant shall broadcast a notice, fulfilling the requirements in Subsection R315-124-31(d)(2), at least once on at least one local radio station or television station. The applicant may employ another medium with prior approval of the Director.

(iv) A notice to the permitting agency. The applicant shall send a copy of the newspaper notice to the Director and to the appropriate local government, in accordance with Subsection R315-124-10(c)(1)(x).

(2) The notices required under Subsection R315-124-31(d)(1) shall include:

(i) The date, time, and location of the meeting;

(ii) A brief description of the purpose of the meeting;

(iii) A brief description of the facility and proposed operations, including the address or a map, e.g., a sketched or copied street map, of the facility location;

(iv) A statement encouraging people to contact the facility at least 72 hours before the meeting if they need special access to participate in the meeting; and

(v) The name, address, and telephone number of a contact person for the applicant.

R315-124-32. Procedures For Decisionmaking - Public Notice Requirements at the Application Stage.

(a) Applicability. The requirements of Section R315-124-32 shall apply to all part B applications seeking initial permits for hazardous waste management units. The requirements of Section R315-124-32 shall also apply to part B applications seeking renewal of permits for such units under Section R315-270-51. The requirements of Section R315-124-32 do not apply to permit modifications under Section R315-270-42 or permit applications submitted for the sole

purpose of conducting post-closure activities or post-closure activities and corrective action at a facility.

(b) Notification at application submittal.

(1) The Director shall provide public notice as set forth in Subsection R315-124-10(c)(1)(ix), and notice to appropriate units of State and local government as set forth in Subsection R315-124-10(c)(1)(x), that a part B permit application has been submitted to the Director and is available for review.

(2) The notice shall be published within a reasonable period of time after the application is received by the Director. The notice shall include:

(i) The name and telephone number of the applicant's contact person;

(ii) The name and telephone number of the Division, and a mailing address to which information, opinions, and inquiries may be directed throughout the permit review process;

(iii) An address or email address to which people can write in order to be put on the facility mailing list;

(iv) The location where copies of the permit application and any supporting documents can be viewed and copied;

(v) A brief description of the facility and proposed operations, including the address or a map, e.g., a sketched or copied street map, of the facility location on the front page of the notice; and

(vi) The date that the application was submitted.

(c) Concurrent with the notice required under Subsection R315-124-32(b), the Director shall place the permit application and any supporting documents in a location accessible to the public in the vicinity of the facility or at the Division's office.

R315-124-33. Procedures For Decisionmaking - Information Repository.

(a) Applicability. The requirements of Section R315-124-33 apply to all applications seeking permits for hazardous waste management units.

(b) The Director may assess the need, on a case-by-case basis, for an information repository. When assessing the need for an information repository, the Director shall consider a variety of factors, including: the level of public interest; the type of facility; the presence of an existing repository; and the proximity to the nearest copy of the administrative record. If the Director determines, at any time after submittal of a permit application, that there is a need for a repository, then the Director shall notify the facility that it shall establish and maintain an information repository. See Subsection R315-270-30(m) for similar provisions relating to the information repository during the life of a permit.

(c) The information repository shall contain all documents, reports, data, and information deemed necessary by the Director to fulfill the purposes for which the repository is established. The Director shall have the discretion to limit the contents of the repository.

(d) The information repository shall be located and maintained at a site chosen by the facility. If the Director finds the site unsuitable for the purposes and persons for which it was established, due to problems with the location, hours of availability, access, or other relevant considerations, then the Director shall specify a more appropriate site.

(e) The Director shall specify requirements for informing the public about the information repository. At a minimum, the Director shall require the facility to provide a written notice about the information repository to all individuals on the facility mailing list.

(f) The facility owner/operator shall be responsible for maintaining and updating the repository with appropriate information throughout a time period specified by the Director. The Director may close the repository at the Director's discretion, based on the factors in Subsection R315-124-33(b).

R315-124-34. Public Participation.

In addition to hearings required under the State Administrative Procedures Act and proceedings otherwise outlined or referenced in these rules, the Director shall not oppose intervention in any civil or administrative proceeding by any citizen where permissive intervention may be authorized by statute, rule or regulation. The Director shall publish notice of and provide at least 30 days for public comment on any proposed settlement of any enforcement action.